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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 853.

MICHAEL P. GRACE, II, individually and as a Trustee under the Last Will and Testament of JANET GRACE,

Petitioner,

against

DEEPDALE, INC., REAL PROPERTY OWNERS, INC., GRACE NATIONAL BANK OF NEW YORK, GRACE PROPERTIES, INC., in Liquidation, ALBERT JORGENSEN, COMMITTEE OF JANET MAUREEN GRACE, by Grace National Bank of New York and Michael P. Grace, II, its members, CHARLES MACDONALD GRACE, individually and as a Trustee under the Last Will and Testament of JANET GRACE, deceased, JOSEPH P. GRACE, JR., individually and as a Trustee under the Last Will and Testament of JANET GRACE, deceased, and JOHN P. BOLAND, *Guardian ad Litem* for JANET MAUREEN GRACE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS JOSEPH P. GRACE, JR. AND CHARLES MACDONALD GRACE IN OPPOSITION.

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BRIEF FOR RESPONDENTS JOSEPH P. GRACE, Jr. AND CHARLES MacDONALD GRACE IN OPPOSITION.

Respondents Joseph P. Grace, Jr. and Charles MacDonald Grace (hereinafter called "respondents") respectfully submit that the instant record does not raise any

question worthy of review by this Court, or indeed any federal question whatever, and that this petition for certiorari should accordingly be denied.

Opinion Below.

The trial court's opinion is reported at 9 Misc. 2d 538, 169 N. Y. S. 2d 287 (Sup. Ct., Nass. Co., 1957), and the portion thereof here relevant is reprinted as Appendix A hereto. That decision was unanimously affirmed by the Appellate Division without opinion, 8 App. Div. 2d 965, 191 N. Y. S. 2d 148 (2d Dep't 1959). Motions by petitioner for leave to appeal to the New York Court of Appeals were denied without opinion both by the Appellate Division and the Court of Appeals, 9 App. Div. 2d 682, 192 N. Y. S. 2d 490 (2d Dep't 1959), 7 N. Y. 2d 708 (1959). Thereafter, the Court of Appeals dismissed an appeal, purportedly taken by petitioner as of right, on the ground that "no substantial constitutional question is directly involved", 7 N. Y. 2d 987 (1960), Appendix A to the petition.

Jurisdiction.

Petitioner asserts that this Court has jurisdiction under 28 U. S. C. § 1257(3). Respondents submit that the Court has no jurisdiction because no federal question is involved.

Question Presented.

Does the due process clause of the Fourteenth Amendment guarantee petitioner, under the circumstances in this state civil action, an absolute right to a two-week adjournment in the middle of trial for the purpose of substituting

counsel, so that the trial court had no discretion in the matter?

That is the only question petitioner can properly raise on this record.

Statement of the Case.

Petitioner brought this action for the purpose of rescinding, on the ground of fraud, a written contract for the sale of certain real property in which petitioner, these respondents (petitioner's brothers) and their sister held interests. Two tracts of land (known as "Tullaroan" and "Arthur Farm") were to be conveyed under this contract. Tullaroan was owned in equal one fourth shares by the three brothers and their sister (an incompetent who was then represented by a committee consisting of petitioner and defendant Grace National Bank of New York); the other tract, Arthur Farm, was held in a trust administered by petitioner and respondents as trustees.

The contract of sale was signed by petitioner in each of his three capacities (R. 1606) and resulted, as the trial court found, largely from petitioner's own negotiations (R. 1608). The purchaser was defendant Real Property Owners, Inc., a holding company for defendant Beekdale, Inc. Included in the sale was a 48 room mansion at Tullaroan where petitioner and his wife, Corinne Grace, resided.

Because time was of the essence, the purchaser was permitted to start improving the property before title passed, but the contract provided that the sellers would retain the benefit of such improvements if the contract were judicially disapproved thereafter. The purchaser had improved the property substantially, at a cost of over $400,000, before petitioner reversed his position and began his campaign to obtain such judicial disapproval (R. 1624).

In the course of that campaign petitioner attacked the contract of sale, on substantially the same grounds as those he urged in the instant case, in a proceeding by the bank to obtain court approval for conveyance of the incompetent's interest. As a result, fourteen days of hearings were held before a referee, who rejected petitioner's charges and reported that the contract was in the best interest of the incompetent. This report was confirmed by the Supreme Court, Nassau County. *In the Matter of the Application of Grace National Bank of New York*, N. Y. L. J., April 17, 1956, p. 13, col. 6, *aff'd* 2 App. Div. 2d 222, 154 N. Y. S. 2d 657 (2d Dep't 1956), *aff'd*, 2 N. Y. 2d 822, 140 N. E. 2d 748 (1957).

Petitioner was then ordered to join the bank in conveying the interest of the incompetent. N. Y. L. J. March 7, 1957, p. 11, col. 4, *aff'd*, 4 App. Div. 2d 783, 165 N. Y. S. 2d 715 (2d Dep't 1957). When he refused to do so, he was removed as a member of the committee. N. Y. L. J. April 26, 1957, p. 12, col. 6, *aff'd*, 4 App. Div. 2d 874, 167 N. Y. S. 2d 240 (2d Dep't 1957), motions for reargument and for leave to appeal denied, 4 App. Div. 2d 964, 168 N. Y. S. 2d 611 (2d Dep't 1957).

Petitioner commenced this action in New York County on August 16, 1956, shortly after his wife (as guardian *ad litem* for their infant son, who had a remainder interest in the Arthur Farm trust) had commenced the companion case in Nassau County. She attacked the same contract of sale on similar grounds, and named as defendants the three trustees (petitioner and respondents) and Real Property Owners, Inc. Both actions were consolidated for trial in Nassau County. *Grace* v. *Decipdale, Inc.*, 3 App. Div. 2d 397, 160 N. Y. S. 2d 598 (1st Dep't 1957).

Throughout these proceedings, petitioner and his wife continued on as holdover (and rent-free, R. 1352, 1621)

tenants of Tullaroan mansion. They were not ousted until almost three years after the original closing date. *Grace v. Deepdale, Inc.*, 7 App. Div. 2d 753, 181 N. Y. S. 2d 768 (2d Dep't 1958), motion for leave to appeal denied, 7 App. Div. 2d 867, 182 N. Y. S. 2d 303 (2d Dep't 1959).

Commencement of the trial of this action was repeatedly adjourned at the request of counsel for petitioner and his wife (R. 455, 669). The day before the trial actually commenced, petitioner requested a further adjournment on the ground that he had just retained new counsel to represent him as a defendant in his wife's action (R. 450). Since petitioner had been represented previously in that action by three successive firms of attorneys, and was, nonetheless over a year in default in answering his wife's complaint, the trial court refused that adjournment, and the trial commenced the following day (R. 451).

On the third day of trial, when the first witness was excused, petitioner sought to obtain a mistrial through Corinne Grace's counsel (R. 460). Her attorney moved for a mistrial on the ground that petitioner's rights, in his capacity as a defendant in her action, were prejudiced by the court's refusal to delay the discharge of witnesses pending petitioner's obtaining still another lawyer to represent him in that capacity (R. 458). The court denied that motion, observing (R. 459) that it might have come with better grace from petitioner's counsel in the instant action (Charles Haydon, Esq., for the firm of O'Dwyer & Bernstein). The next day, another lawyer took over as trial attorney for Corinne Grace (R. 641).

At the opening of court the following morning, Mr. Haydon informed the trial judge that he and Mr. Bernstein had had "a very disagreeable conference" with petitioner and his wife the preceding evening, as a result of which

they wished to withdraw as petitioner's attorneys (R. 669). He stated in part:

> "Mr. Haydon: • • • I hesitate to put on the record the things that were said, your Honor; but you must take my word that these things were such that no lawyer could possibly go on under these circumstances. • • •
>
> "The Court: The thing that troubles me is that this matter has been pending and you have the property, that is, Mr. Grace [petitioner] has the property tied up. These people sought to have it determined last June and last May. Now here we are in October and there should not be any further delay. • • •
>
> "Mr. Haydon: • • • I do not think that this week's trial should be cast aside, but I do feel that Mr. Grace under the circumstances should have at least a day to get someone who can represent him and against whom he does not make the charges that are made here" (R. 669-70).

Petitioner insisted that he had not discharged his attorneys, but had only a dispute with them as to "policy" in conducting the trial (R. 675). The court refused to inquire into that conversation, which Mr. Grace claimed was privileged (R. 683), for fear that "ultimately, if Mr. Grace should not prevail, he might have a feeling that that side talk had a deleterious effect upon his case" (R. 678).

Mr. Haydon then stated:

> "• • • I ask your Honor to take my word that no lawyer—no lawyer—who has been told the things I was told last night, and Mr. Oscar Bernstein, the head of this firm, was told would spend five more minutes in this case" (R. 678-79).

Following further colloquy, petitioner was granted a six-day adjournment on the following terms:

> **"The Court: Mr. Grace, the case is over until Monday morning. I will not grant any further adjournments on Monday morning. You will either proceed with it, with this counsel or with new counsel. I will not take any statements that counsel is not ready.**
>
> **"Mr. Michael Grace: Yes, your Honor" (R. 686).**

However, on the adjourned date petitioner appeared with new counsel who requested a two-week further adjournment (R. 689). Up to this point, petitioner and his wife had been represented by over a dozen different attorneys at various stages of their attacks on this same contract of sale (R. 1622) and there was, of course, no assurance as to the tenure of any new counsel. Accordingly, respondents objected to any further delay in having their rights determined. The Court ruled:

> "My order here in this will be, then, Mr. Haydon, that you be required to continue. Counsel who have come in may assist you in the work, but I am not going to release you at this stage and I am going to ask you to stay in the case until such time as counsel who are now employed by Mr. Grace will feel able to take over in full from you. I want to go forward with the matter" (R. 697).

Mr. Haydon protested, stating that he wished to avoid a "humiliating and degrading experience" (R. 701). Nevertheless, when counsel who were to be substituted withdrew, Mr. Haydon continued to present petitioner's case skillfully and thoroughly (R. 1621).

Two days later, during cross examination of a witness called by Mr. Haydon, he received a telegram from petitioner, who was present in court and had also sent similar telegrams to the judge and to counsel for respondents. These began:

> "BERNSTEIN AND O'DWYER THROUGH CHARLES HAYDON HAVE FOUGHT THIS CASE WITH UNQUESTIONABLE ZEAL AND SKILL * * *" (Ct. Ex. K, L, M, R. 2027, emphasis in original).

After criticizing various rulings of the court at some length, they concluded:

> "* * * AFTER A DEPOSITION FROM ME I AUTHORIZE THE PROPER AUTHORITIES WHO EVER THEY MAY BE TO DISCONTINUE THIS TRIAL * * *" (Ct. Ex. K, L, M, R. 2029, emphasis in original).

Petitioner explained orally that he did not wish to go forward, and Mr. Haydon rested his case in compliance with that request (R. 987).

Even then, petitioner was given every opportunity to present his case. He had been using the services of his wife's attorneys throughout the trial, and the court permitted her counsel to elicit testimony with respect to his action (R. 1032). They did so with the assistance of Mr. Haydon and another attorney whom Mr. Grace invited to the trial (R. 1162-63), as well as Mr. Grace himself (R. 1231). Moreover, Mr. Grace, who is not an attorney but has attended three law schools, was permitted to argue *pro se* whenever he so desired, and he took full advantage of this privilege (R. 1192, 1212, 1623).

In short, as the trial court found: "There was every opportunity for Michael Grace to have tried to have had the benefit of counsel and to have presented in full the entire matter which is the subject of this litigation" (R. 1620-21).

ARGUMENT.

It should be clear from the foregoing that the questions which petitioner would have this Court consider are not present here at all. The ruling which petitioner seeks to reverse did not deprive him of any right to counsel, but simply denied his application for a further adjournment for a variety of sound reasons set forth in the court's opinion (Appendix A), which states in part:

> "Whatever motives Michael Grace [petitioner] had for delaying the trial were not fully clear to the court. He has, however, continued to live in the property covered by the contract, substantially rent-free since the contract was signed" (R. 1621).
>
> "The court deemed itself justified in adhering to this position because (1) considerations of fairness to the defendants required it; (2) expedition of the court's business required it; (3) there was counsel actively presenting the case fully against the defendants on behalf of Michael P. Grace, Jr., and (4) it might well be inferred from the long succession of lawyers retained by Michael Grace that his bad relationship with one lawyer after another was not without some fault on his part * * *" (R. 1622).

In his appeal to the Appellate Division, petitioner relied heavily on a contention that Mr. Haydon had become "disabled" to act as his counsel, and that the trial should therefore have been stayed for 30 days pursuant to Section 240 of the New York Civil Practice Act. The Appellate Division unanimously held otherwise, and denied his motion for leave to appeal to the Court of Appeals. Petitioner then asserted that he had a right to such an appeal because the case involved "the Construction of the Constitutions of the United States and the State of New York, and par-

ticularly questions of due process of law thereunder" (Petitioner's notice of appeal to the Court of Appeals, January 4, 1960).[1]

Respondents moved to dismiss that appeal on the ground that the Court of Appeals lacked jurisdiction to entertain it since it did not directly present any substantial question under either constitution. After hearing the same arguments petitioner now urges, the Court of Appeals unanimously dismissed his appeal on the ground that "no substantial [state or federal] constitutional question is directly involved" (Appendix A to petition).

In other words, the Court of Appeals expressly found that there was no need to consider the constitutional question petitioner now seeks to raise. That decision, it is submitted, is a sufficient basis for denying this petition because this Court "must" decline to take jurisdiction where the state court "might" have rested its decision on a non-federal ground. *Ellis* v. *Dixon,* 349 U. S. 458, 459, and cases there cited.

Despite the holdings of all of these state courts, this petition is based entirely on an attempt to convert the trial court's ruling refusing to permit further delay into a denial of counsel. That attempt will not withstand the briefest analysis. As the above statement of facts demonstrates, the record here will not support the petition's efforts to contradict the trial court's factual findings (pp. 7-8), or its gratuitous assertion that "The farce was not petitioner's fault" (p. 12), or the questions concerning "denial of counsel" which the petition seeks to pose (p. 3).

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[1] Petitioner also asked leave to appeal in the Court of Appeals, but that motion was denied (Appendix B to petition). At that time petitioner argued, among other things, that "This case is *sui generis.*" (Petitioner's notice of motion for leave to appeal, affidavit and brief in the Court of Appeals, November 5, 1959, p. 53). Respondents agree, and submit that this is an additional reason for denying certiorari.

The plain fact is that at no stage of this proceeding was petitioner deprived of any right to counsel, or indeed of any aspect of a fair trial. The court made it clear to petitioner that he could retain any attorney he wished, and be heard through that attorney (R. 686, 1212). Moreover, the trial judge directed Mr. Haydon to remain and assist any new attorney (R. 697) and Mr. Haydon offered to render such assistance without charge (R. 701). In addition, as we have seen, petitioner was effectively represented by Mr. Haydon and by his wife's counsel, not to mention his own objections and arguments *pro se*.

In view of these facts, and of petitioner's persistent attempts to forestall the determination of this action, the trial court's exercise of its inherent discretion to prevent further delay was eminently sound. Any other result would have disregarded the rights of the defendant purchaser (to obtain prompt possession of the Tullaroan property) of respondents (to have their names cleared of these charges of fraud promptly) and of the court (to have the case tried expeditiously and not to have its work disrupted for months as it would otherwise have been).

On this record, petitioner's argument comes down to a contention that he had an absolute right to further delay the trial, and that the trial judge was powerless to control the progress of the proceedings before him. In support of his contention, petitioner cites the Sixth Amendment's guaranty of the right to counsel (to an "accused" in federal "criminal prosecutions") and urges that the court's ruling violated his rights (as plaintiff in a state civil action) under the due process clause of the Fourteenth Amendment.

The authorities upon which petitioner relies to buttress this argument are clearly inapplicable to the instant case. Chief among these is *Powell* v. *Alabama*, 287 U.S. 45, where the majority defined their holding as follows:

> "All that it is necessary now to decide, as we do decide, is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; * * *" (p. 71).

While the *Powell* case *dictum* regarding an arbitrary refusal to hear a party by his counsel (quoted at pp. 11-12 of the petition) has no application here in any event, it has apparently been limited in later decisions. *Betts* v. *Brady*, 316 U. S. 455, 463; see also, *Gallegos* v. *Nebraska*, 342 U. S. 55, 64. In *Betts* v. *Brady*, this Court commented as follows upon a contention similar to that advanced in the present petition:

> "* * * indeed, it was said by petitioner's counsel both below and in this court, that as the Fourteenth Amendment extends the protection of due process to property as well as to life and liberty, if we hold with the petitioner, logic would require the furnishing of counsel in civil cases involving property" (p. 473).

Equally far afield are petitioner's references to *Roberts* v. *Anderson*, 66 F. 2d 874 (10th Cir. 1933), and *Glasser* v. *United States*, 315 U. S. 60. In the *Roberts* case, the Tenth Circuit affirmed the District Court's refusal to give full faith and credit to a decision in which a state court had refused to hear counsel selected by one of the parties, and instead arbitrarily forced upon her court-appointed counsel who acted against her interests. *Glasser* v. *United States* was a reversal of a criminal conviction where the defendant was forced to share his attorney with another defendant whose interests conflicted with his. These cases simply

have no bearing on the situation which confronted the trial court in the instant action.

Here, the court gave petitioner ample opportunity to test his claims regarding the validity of this contract, which he has attacked so often and so unsuccessfully. The court's refusal to allow petitioner to delay the trial whenever he wished to do so can afford no basis for certiorari.

Conclusion.

The questions petitioner seeks to raise are without factual basis or legal merit.

The petition should be denied.

Respectfully submitted,

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Dated: May 25, 1960

Appendix.

Relevant Portion of the Trial Court's Opinion, from 9 Misc. 2d 538, 552-56.

MICHAEL GRACE AND HIS LEGAL REPRESENTATION

Because there were certain aspects of the trial of these consolidated actions which the court regards as unusual, it is necessary to comment upon them. These actions were long-delayed in being brought to trial. The contract of sale itself was executed in May, 1955. Michael Grace, as has been earlier pointed out, energetically participated in the negotiations which preceded its final execution, thoroughly examined the instrument, initialled it in numerous places and is a signatory thereto in three separate capacities. After the execution of the contract of sale Michael Grace did his utmost to delay the delivery of the deed and to prevent the approval by the Supreme Court of the sale of the incompetent's interest. When the actions appeared on the calendar for trial they were delayed time after time. They should have been tried in May or June of this year but they went over the summer recess and through the September, 1957 Term and finally came on for trial in October. The dates upon which the actions appeared on the calendar are set forth in the record and they are numerous.

It was known from statements of counsel that the trial of these actions would take almost a full month to complete. Nevertheless, on the opening day of the October Term Edward T. O'Brien, Esq., appeared, asking leave to be substituted as the attorney defending Michael Grace in his capacity of a defendant in Action No. 2 against his son's complaint to have the contract set aside. At that particular juncture he was represented by Charles Haydon, Esq., of counsel for the firm of O'Dwyer & Bernstein, in his capacity as plaintiff in Action No. 1 and at the same time his wife, Corinne Grace, in her capacity as guardian ad litem of the Grace's infant son in Action No. 2, was represented by Arthur H. Rose, Esq.

The court denied an adjournment to enable the proposed incoming attorney to prepare himself for trial. There were two lawyers fully prepared on the same side of the action as Michael Grace stood on, namely, Mr. Haydon and Mr. Rose, and they were both present in the courtroom ready to proceed. After a few days of trial, Mr. Rose retired from active participation in the trial, although he remained as attorney of record. In his place his associate, Louis Schultz, Esq., took over in behalf of Corrine Grace, guardian ad litem of the infant plaintiff, Michael Grace, Jr., in Action No. 2. Later, after the trial had progressed for more than a week, Mr. Haydon, trial counsel for Michael Grace in Action No. 1, came in at the opening of court on a Tuesday morning and asked to be relieved of his obligation to go forward with the case. He stated that the evening before there had been a sharp interchange between Michael Grace on the one hand and Mr. Bernstein and himself on the other and that the things which had been said to Mr. Bernstein and himself by Michael Grace were of such a nature that he, Mr. Haydon, could not go on with the trial. An application was made for an adjournment and, although the court did not relieve Mr. Haydon of his obligation to continue in the case, an adjournment was granted from that Tuesday morning until the following Monday at 10:00 A.M. with the understanding that Mr. Haydon and Michael Grace would settle their differences in the meantime, so that Mr. Haydon would proceed as Michael Grace's counsel or Michael Grace would come to court with new counsel prepared to proceed without further adjournment. Michael Grace did come on the following Monday with new counsel who informed the court that he would take over the prosecution of Action No. 1 on the plaintiff's side provided he was granted a two weeks' adjournment to prepare for that role. This request for an adjournment, in the exercise of the court's discretion, was denied in view of the fact that the case had been in progress for a considerable length of time and because it was the view of the court that it was completely unfair to the defendants, who were blameless, to put them through the expense of delay and the general inconvenience attendant upon such

an adjournment. It was the court's further view that to grant the requested adjournment would seriously upset the routine of the court since the Trial Justice presiding was assigned to Special Term, Part II, for the month of October and it was calculated that this litigation should be disposed of during that period. Had a two weeks' adjournment been granted it would have disrupted calendars and assignments into the succeeding months. Accordingly, the adjournment was denied. Thereupon the prospective substituted attorney withdrew and the court requested Mr. Haydon to continue and he did stay on in the case and prosecuted it until one morning Michael Grace appeared and, in person, asked the court that Mr. Haydon do nothing further, which position he backed up with telegrams which he sent to counsel and the court.

There was available to Michael Grace throughout the full term of the trial the services of the lawyer whom Corinnne Grace had retained on behalf of Michael Grace's son. During the course of all the trial Michael Grace and Corinne Grace attended daily, conferred freely and Michael Grace himself, as the record will show, conferred throughout the trial with Mr. Schultz who was prosecuting the action in behalf of the infant plaintiff, Michael Grace, Jr. The court also extended to Mr. Schultz the right to examine in respect of the allegations of the complaint in Action No. 1 and the issues raised in both Action No. 1 and Action No. 2. There was every opportunity for Michael Grace to have tried to have had the benefit of counsel and to have presented in full the entire matter which is the subject of this litigation. The plaintiffs' side of this litigation took almost three weeks of actual trial and within that period, for a case of this nature, there was a full and fair presentation of the issues. Mr. Haydon, until he was forbidden by Mr. Grace to do so, presented the plaintiff's case in Action No. 1 with skill and thoroughness. Mr. Schultz's presentation of the plaintiff's case in Action No. 2 and his questioning as to the issues in both actions was characterized by similar skill and thoroughness. Whatever motives Michael Grace had for delaying the trial were not fully clear to the

court. He has, however, continued to live in the property covered by the contract, substantially rentfree since the contract was signed.

Throughout the trial Michael Grace was accorded and took advantage of the opportunity to make statements at times when he was not under oath and this was noted in the record. From time to time he urged upon the court that he was unfairly dealt with claiming that he was not represented by counsel. The fact is, however, that he had a long succession of attorneys in and out of the negotiations which led to the contract of sale and in this particular litigation as well as others connected in greater or lesser degree with it. On one occasion during a luncheon recess Michael Grace met James E. Boboras, Esq., a lawyer of his acquaintance, and brought him back to the courtroom for the afternoon session. Mr. Boboras sat at the counsel table and assisted Mr. Schultz. During the progress of the trial on that afternoon Mr. Boboras spoke up from time to time in reference to the progress of that particular session. He was not seen or heard of again in the litigation after the close of that afternoon session. No explanation of his subsequent nonappearance was given.

Mr. Haydon, at the court's direction, was present at every session and remained throughout the trial ready to examine witnesses and to proceed except for the fact that Michael Grace requested that he not do so. No delay in the course of the trial beyond the delay from Tuesday morning to the following Monday morning already described was permitted. The court deemed itself justified in adhering to this position because (1) consideration of fairness to the defendants required it; (2) expedition of the court's business required it; (3) there was counsel actively presenting the case fully against the defendants on behalf of Michael P. Grace, Jr.; and (4) it might well be inferred from the long succession of lawyers retained by Michael Grace that his bad relationship with one lawyer after another was not without some fault on his part. It may be noted in passing that some phase of the matters in dispute in this litigation has been considered in each of the follow-

ing reported decisions (*Matter of Grace*, 2 N. Y. 2d 822, *supra*; *Grace* v. *Deepdale, Inc.*, 3 A. D. 2d 397; *Matter of Grace*, 2 A. D. 222, *supra*; *Grace* v. *Grace*, 155 N. Y. S. 2d 336). No less than a dozen attorneys, either as attorneys of record or of counsel, have represented Michael Grace and Corinne Grace, his wife, in this litigation and the cases just enumerated. Michael Grace testified during the trial that he attended three law schools although he had never taken a degree in law nor become admitted to practice in any court of the country. During the trial Michael Grace was continuously in attendance, except for short intervals of time. When present in the courtroom he sometimes occupied a seat in the spectator section from which position he frequently dispatched his wife, Corinne Grace, with oral or written messages to Mr. Schultz. At other times he occupied a seat at the counsel table and when there he conferred orally and in writing with Mr. Schultz. From time to time Michael Grace conferred with witnesses both in and out of the courtroom. His statements made when not under oath and noted in the record, as earlier mentioned, were at times delivered from a point in the spectator section of the courtroom and at other times from the counsel table. The demeanor of Michael Grace and his conduct in and about the courtroom during the trial showed clearly that he assumed general direction of the litigation on his own account.